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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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BEAU EZEKIEL BROWN,	Case No. 2:11-cv-00790-KJD-NJK
<div style="text-align: right;">Petitioner,</div>	ORDER
v.	
ISIDRO BACA, <i>et al.</i> ,	
<div style="text-align: right;">Respondents.</div>	

On August 29, 2017, the Court denied relief in this habeas corpus action, and denied the petitioner, Beau Ezekiel Brown, a certificate of appealability (ECF Nos. 58, 59). Brown appealed, and sought a certificate of appealability in the Ninth Circuit Court of Appeals, and that court denied Brown's request for a certificate of appealability on January 31, 2018 (ECF No. 62).

On May 14, 2018, Brown filed, in this Court, a Motion to Reopen Case and Motion for Reconsideration (ECF Nos. 66, 67). The Court denied that motion on May 17, 2018 (ECF No. 68).

Brown filed a notice of appeal on June 29, 2018, appealing from the May 17, 2018 order (ECF No. 71), and, on July 10, 2018, the Court of Appeals remanded the case to this Court for the limited purpose of granting or denying a certificate of appealability (ECF No. 73).

1 The standard for issuance of a certificate of appealability requires a “substantial  
2 showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c). The Supreme Court  
3 has interpreted 28 U.S.C. § 2253(c) as follows:

4 Where a district court has rejected the constitutional claims on the  
5 merits, the showing required to satisfy § 2253(c) is straightforward: The  
6 petitioner must demonstrate that reasonable jurists would find the district  
7 court’s assessment of the constitutional claims debatable or wrong. The  
8 issue becomes somewhat more complicated where, as here, the district  
9 court dismisses the petition based on procedural grounds. We hold as  
10 follows: When the district court denies a habeas petition on procedural  
grounds without reaching the prisoner’s underlying constitutional claim, a  
COA should issue when the prisoner shows, at least, that jurists of reason  
would find it debatable whether the petition states a valid claim of the denial  
of a constitutional right and that jurists of reason would find it debatable  
whether the district court was correct in its procedural ruling.

11 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see also *James v. Giles*, 221 F.3d 1074,  
12 1077-79 (9th Cir. 2000).

13 The Court finds that a certificate of appealability is unwarranted with respect to the  
14 May 17, 2018 order. It is beyond reasonable dispute that, in his Motion to Reopen Case  
15 and Motion for Reconsideration, Brown contends that, on account of failures of his  
16 counsel, three claims were left out of his petition, and he moves for relief from the  
17 judgment so that he can present those claims. Further, it is beyond reasonable dispute  
18 that, under *Gonzalez v. Crosby*, 545 U.S. 524, 530-31 (2005), Brown’s motion is therefore  
19 subject to the requirements of 28 U.S.C. § 2244(b). Finally, it is beyond dispute that Brown  
20 makes no allegation, or showing, that he has obtained, from the Ninth Circuit Court of  
21 Appeals, an order authorizing a second or successive habeas petition, and that his motion  
22 is subject to denial on that ground. In short, the procedural ruling in the May 17, 2018  
23 order is not reasonably debatable.

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1           **IT IS THEREFORE ORDERED** that petitioner is denied a certificate of  
2 appealability with respect to the May 17, 2018 order (ECF No. 68).

3           **IT IS FURTHER ORDERED** that the Clerk of the Court is directed to forward this  
4 order, and the record, to the Court of Appeals as described in that court's order of July  
5 10, 2018 (ECF No. 73).

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7           DATED THIS 10 day of July, 2018.

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11           KENT J. DAWSON,  
12           UNITED STATES DISTRICT JUDGE  
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